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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 126/2001

UOI & ANR. Appellant

Through: Mr Ankur Chhibber, Adv.

versus

CAPTAIN RAVI BHAKAR & ORS. Respondents

Through: Mr Mukul Talwar, Sr. Advocate with
Mr Ankit Dixit, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **07.01.2016**

1. The present appeal is preferred by the Union of India which is aggrieved by the judgment and order of the learned Single Judge dated 10.07.2000. The impugned judgment had set aside the order, whereby the service of the writ petitioner-the respondent herein, within the Army was terminated by invoking Rule 14 of the Army Rules, 1954 read with Section 19 of the Army Act, 1950. In a sense, the power invoked was one whereby an officer can be terminated from the services without any enquiry. The controlling criteria in such cases is that the Central Government or the Chief of Army Staff should be “satisfied that the trial of the officer by Court Martial is inexpedient or impracticable”.

2. The respondent-writ petitioner who was serving as Captain in the Indian Army on Short Service Commission was charged with misconduct of a grave nature which led to the setting up of a Court of Inquiry. The misbehaviour pertained to acts of sexual harassment of

one lieutenant in the Army with whom the writ petitioner was in a relationship for about two years. In the Court of Inquiry, the deposition of various witnesses, including the complainant/informant was examined. What led to the complaint was the alleged behaviour of the writ petitioner on 12.02.1995. Apparently, the incident was reported to one Lieutenant Colonel Balbir Singh. His role too was adversely commented upon. The record shows that the complainant was never medically examined. Having regard to the adverse findings in the Court of Inquiry, the Indian Army chose to invoke its powers under Section 19 read with Rule 14.

3. The learned Single Judge in this case followed the previous ruling of the Supreme Court in ***Major Radhakrishnan vs. Union of India and Ors.*** AIR 1996 SC 3091 and held that the formation of opinion that the holding of an inquiry was impracticable was wrongly arrived at. The appellant first urges that the said view in ***Radhakrishnan*** (*supra*) on the basis of which the Single Judge arrived at his conclusions, is no longer in a law in view of subsequent decision of the Supreme Court.

4. In ***Union of India vs. Harjeet Singh Sandhu*** AIR 2001 SC 1772, the Supreme Court reversed the view taken by it in ***Radhakrishnan's*** case (*supra*) and held that expiration of period of limitation *ipso facto* does not render either the Central Government or the Chief of Army Staff powerless and that the power to dismiss an officer without Court Martial is preserved.

5. The learned Single Judge also embarked upon a detailed examination of the circumstances and was of the opinion that there

was no material on the record to justify the invocation of Section 19 read with Rule 14. It is submitted by the appellant that this finding is contrary to the records since the material in the form of evidence led before the Court of Inquiry was sufficient for the Chief of Army Staff to form the conclusion which culminated in the order of dismissal.

6. As regards first submission, i.e., the Single Judge's view is based upon **Major Radha Krishnan's** case (*supra*), there cannot be any dispute that **Harjeet Singh Sandhu** (*supra*) does override the previously held view. At the same time, we notice that in this case the misconduct alleged is said to have occurred on 12.02.1995. The Court of Inquiry was concluded and its recommendations/report was submitted on 10.10.1995. This Court has been shown the original file which led to the impugned order. A consideration of the said file would reveal that on receipt of the report of the Court of Inquiry, the General Officer Commanding (GOC) in his noting of 08.06.1996 stressed the need for *strictest disciplinary action to be taken against all individuals involved in the affair*-*"in particular Captain Ravi Bhakar. The action must be official and formal, through a Court Martial"*. This view was concurred with by the Chief of Army Staff who appears to have issued consequential directions to initiate General Court Martial proceedings against all the alleged culprits. Instead of giving effect to the Chief of Army Staff's directions apparently another noting was made, this time by one Major General K.N. Mishra which directed the need to bring out charges against all those involved in causing miscarriage and also the other issue, i.e., the previous relationship of the officer concerned with the complainant. It

is, thereafter, i.e., after 09.08.1996 (in fact on 18.08.1996) that another officer suggested that an action of dismissing the writ petitioner without recourse of a Court Martial might be expedient. This noting is to the following effect “*while I go along with JAG’s advice at note 40 that Capt Bhakar as directed by COAS, should be tried by GCM and the evidence be collected accordingly the circumstances and non-cooperation of the victim, i.e., xxxx and other material witnesses are not xxxx to co-operate. In that eventuality as brought out by APGDV, there are possibilities of the accused getting away scot free*”. This noting was approved by the Chief of Army Staff on 20.08.1996.

7. There is nothing on the record to support the apprehensions of the concerned officer who suggested that the witnesses might not be willing to co-operate. In fact, after the initial approval of the Chief of Army Staff that the General Court Martial should be held which sought to be given effect to a ruling appears to have occurred in the light of further directions proposing to expand the scope of enquiry into the previous circumstances that encompassed the existing relationship of the accused with the complainant.

8. Having regard to the totality of these circumstances, it cannot be said, at least in this case, that the apprehension expressed by the Army Authorities was based upon any tenable material except on their own self-serving belief. There is nothing in the form of a letter by any individual expressing reluctance to depose before the proposed Court Martial nor is there any report in support of the noting. Furthermore importantly, unlike in the case of **Radhakrishnan’s** case

(*supra*), the General Court Martial could very well have been conducted. The Indian Army, in our opinion, chose to disregard the fundamental tenet. The victim nowhere expressed any reluctance about her inability to participate in the General Court Martial proceedings. The Court is conscious of the fact that the complainant was also serving Member of the Army at that stage. At the same time, this Court has been informed of the fact that after the impugned judgment was delivered the writ petitioner was taken back into service some time later. Pursuant to contempt proceedings (Contempt Case No.206/2003), the amounts payable towards arrears of salary were deposited and allowed to be withdrawn. This Court has also been informed that the writ petitioner was considered for permanent commission, but rejected on the ground of medical unfitness. In the ordinary course of events, the petitioner's turn would have ended on 24.08.2000.

9. In these circumstances, this Court is of the opinion that even while setting aside the observations in para 66 of the impugned judgment, so far as they affirm the applicability of *Major Radhakrishnan's* judgment (*supra*) is concerned, no further interference with the impugned judgment are called for. No other claim of the writ petitioner has been examined on the merits.

The writ petition is dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 07, 2016/bg